



Disproportionality and Disparity in Adult Felony Sentencing Fiscal Year 2005

Disproportionality

“Disproportionality” in adult felony sentencing is defined as the degree to which the demographic composition of adult felony offenders differs from that of the general state population (Figure 1, 2).

Figure 1: State Population, 2004

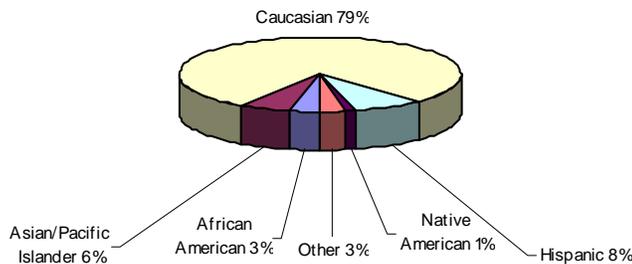
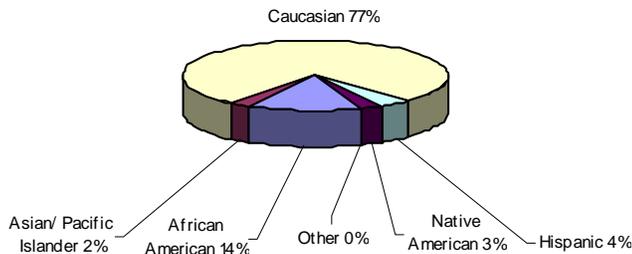


Figure 2: Adult Felony Sentencing, FY 2005



Over-representation may arise in many stages of the criminal justice system. As such, this report summarizes but does not investigate the causes of disproportionality in sentencing. For the purposes of this report, disproportionality is measured by a ratio, the percentage of a group in an event such as sentencing, relative to the percentage of that group in the population.

Sentencing Ratio Calculation

$$\text{Ratio} = \frac{\% \text{ racial group in sentencing}}{\% \text{ racial group in the population}}$$

If the ratio is below 1 a group is under-represented, over-represented if above 1, and in proportion to the population if the ratio equals 1.

During fiscal year 2005, Washington courts entered 28,526 adult felony sentences. Approximately 80% of the offenders were male and 33% of the sentences were for minorities (Table 1)¹.

Table 1: Demographics²

Gender	Adult Sentences	% of Adult Sentences	State Population	% of State Population	Ratio
Female	5370	19.82%	3,095,533	50.19%	0.39
Male	21729	80.18%	3,072,267	49.81%	1.61
Race/Ethnicity	Adult Sentences	% of Adult Sentences	State Population	% of State Population	Ratio
African American	3759	13.87%	200,866	3.26%	4.26
Asian/Pacific Islander	659	2.43%	383,939	6.22%	0.39
Caucasian	20823	76.84%	4,808,975	77.97%	0.99
Hispanic	1110	4.10%	517,645	8.39%	0.49
Native American	712	2.63%	91,053	1.48%	1.78

Excludes 1463 sentences in which gender and/or race/ethnicity were not provided.

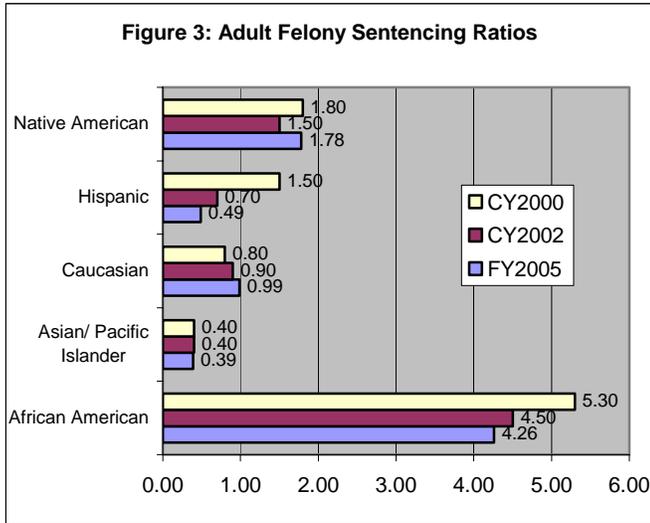
Women accounted for approximately 50% of the state population but only 20% of sentences, a ratio of 0.39. This compares to a ratio of 1.61 for men. African Americans comprise 3.26% of the state population in Washington but received 13.87% of all felony convictions and were the most over-represented racial group with a 4.26 ratio. Native Americans were 1.78 times over-represented in adult sentencing. Asian/Pacific Islanders had the lowest ratio, 0.39. Caucasians, the largest segment of the population, 77.97%, accounted for 76.84% of all convictions and had a 0.99 ratio.

¹ Gender and/or Race/Ethnicity were not provided on 1427 adult felony sentences.

² Although the United States Census Bureau does not include Hispanic in its list of “races,” due to the relatively large segment of Washington’s population identified as “Hispanic” and in the interest of clarifying disproportional issues, persons of Hispanic ethnicity have been placed in this group regardless of race.

Trends in Disproportionality

In Calendar Year 2000 and 2002 African and Native Americans were the most over-represented groups in adult felony sentencing. This trend continued in fiscal year 2005 (Figure 3). Asian/ Pacific Islanders were under-represented during this same period. The most significant changes over the past 4 years include a recent increase in over-representation for Native Americans and a steady decrease in representation of Hispanic and African Americans. The representation of Asian/Pacific Islands continued at the lowest rate.

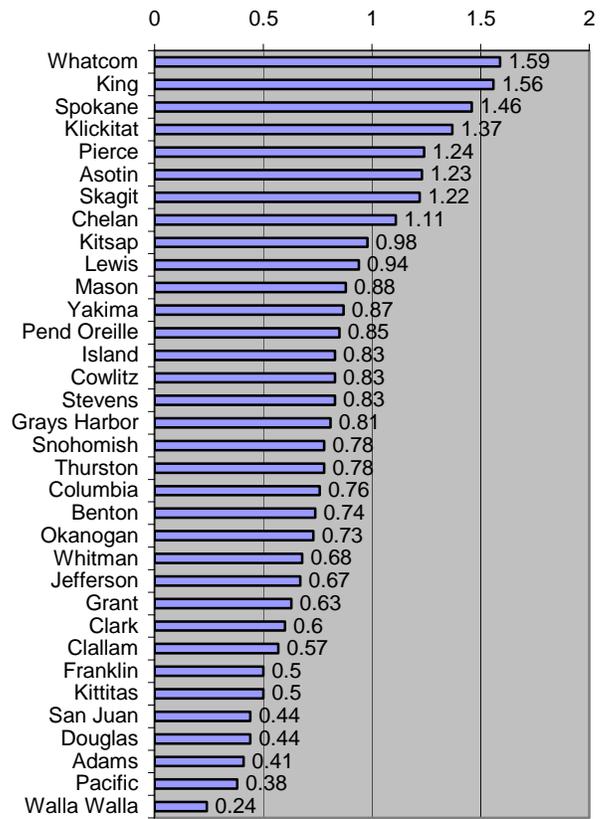


Geographic Disproportionality

Statewide data is useful to reveal aggregate trends in adult felony sentencing. Due to variations in the racial and ethnic composition of a population from one geographic area to another, localized observations may better represent sentencing practices in a particular region. Of 34 counties reviewed, 8 were found to have a sentencing ratio for all minorities greater than 1 and 26 counties had a ratio less than or equal to 1 (Figure 4)³. Pierce, Klickitat, Spokane, King and Whatcom counties reported the highest ratios of over-representation of minorities in sentencing compared to population. San Juan, Douglas, Adams, Pacific, and Walla Walla counties reported the lowest ratios of under-representation of minorities.

³ Small numbers tend to produce unstable ratios. Counties with less than 30 adult felony sentences, including Ferry, Garfield, Lincoln, Skamania and Wahkiakum are excluded.

Figure 4: County Sentencing Ratios for Minorities



Disparity⁴

“Disparity” in sentencing is defined as differing treatment of offenders with the same current offense and criminal history. Since the enactment of the Sentencing Reform Act (SRA), Washington State adopted a system of presumptive sentencing guidelines. Adults who commit criminal offenses are subject to standard terms according to a sentencing grid or to a variety of sentencing alternatives. Standard ranges limit but do not eliminate the possibility of disparate treatment. Disparity in sentencing can arise in the placement within the standard ranges, the incarceration decision, and the alternative sentencing rates among different gender and racial/ethnic groups.

⁴ This report summarizes sentencing data and the descriptive nature only serves a limited purpose as an indicator that disparity may exist. As such, it should be noted that other contributing factors should be examined. The SGC database does not contain information covering all eligibility criteria for alternatives.

Placement in the Standard Range

The majority of felony sentences in Washington, 19,886 or about 70% in fiscal year 2005, fell within the standard ranges. Offenders subject to standard range sentences face terms of incarceration which are limited by the range defined on the sentencing grid. The range is defined by the intersection of the current offense seriousness level and criminal history score on the grid. The placement in the range was calculated for each offender. The average confinement in FY 2005 for adult offenders was approximately 15 months, an average of 32% of the standard range or a placement of 0.32.

Placement with Sentencing Ranges

Percent of total range =	$\frac{\text{Sentence Received} - \text{Low Range}}{\text{High Range} - \text{Low Range}}$
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Example: A 3 month sentence for an offender with a standard range of 2 to 6 months has a placement in the range of .25 or 25% of the 4 month range.
$$\frac{3 - 2}{6 - 2} = .25$$

It is helpful in analyzing disparity to examine the sentences of racial groups and gender given the same current offense and criminal history⁵. Comparison is possible in 19 standard range grid cells where there were sufficient sample sizes to compare gender. Men received longer average sentences in 16 of the 19 cells and on average were sentenced at 3.54% higher than women within the standard range.

There were sufficient sample sizes in 23 cells to compare Caucasians to one or more other race/ethnicities. Caucasians had the highest placement in 14 of the 23 cells compared. Interestingly, in the 9 cells where another race had the highest placement, all had offender scores less than 5. African Americans had the highest placement in 6 of 23 grid cells compared and placement differed by as much as 4% higher in standard ranges than Caucasians. Hispanics had the highest placement in 3 of the 6 grid cells where a comparison was possible. Placement differed by as much as 6% higher. Native Americans received the second highest placement in 2 of the 4 possible cell comparisons. Asian/Pacific Islanders had the lowest placement in the 1 grid cell where comparison was possible. Placement was 6% lower than other groups within the range.

The commission is conducting additional research into disparity within standard range sentences and expects to distribute an additional report during the spring of 2006.

⁵ Small numbers produce unstable statistics. Calculations are made only with 30 or more adult felony sentences.

Incarceration Decision

In FY 2005 there were 9,465 sentences where offenders fell within low ranges on the grid of 1 month or less and were therefore eligible for non-confinement sentences (Table 3)⁶. Of those, 982 or 10% received non-confinement sentences. Women received non-confinement sentences at higher rates than men. Asian/Pacific Islanders received non-confinement sentences at the highest rate among racial/ethnic groups, 19%. Native Americans and Hispanics received the lowest rates of non-confinement sentences.

Table 3: Non-Confinement Sentence

Gender	Eligible	Received	Percent
Male	6659	582	8.7%
Female	2360	327	13.9%
Race/ Ethnicity	Eligible	Received	Percent
African American	914	94	10.3%
Asian/ Pacific Islander	199	38	19.1%
Caucasian	7120	730	10.3%
Hispanic	440	23	5.2%
Native American	240	18	7.5%
Total	9465	982	10.4%

Excludes 80 sentences in which gender and/or race/ethnicity were not provided.

First Time Offender Waiver

There were 9,225 adult felony sentences eligible for the First Time Offender Waiver (FTOW). Of those, 1,376 or about 15% received the alternative (Table 4).

Table 4: FTOW

Gender	Eligible	Received	Percent
Male	6360	928	14.6%
Female	2473	409	16.5%
Race/ Ethnicity	Eligible	Received	Percent
African American	845	105	12.4%
Asian/ Pacific Islander	255	34	13.3%
Caucasian	6901	1114	16.1%
Hispanic	479	41	8.6%
Native American	206	20	9.7%
Total	9225	1376	14.9%

Excludes 65 sentences for which gender and/or race/ethnicity were not provided.

Women received FTOW sentences at rates slightly higher than men, and Caucasians received these sentences at slightly higher rates than other race/ethnicities. Hispanics and Native Americans

⁶ Sentences in the 1 to 3 month range are considered eligible for a non-confinement sentence because a 1 month sentence can be converted to 240 hours of community service.

received FTOW sentences at the lowest rates, 8.6% and 9.7% respectively.

Drug Offender Sentencing Alternative

There were 5,801 offenders eligible for the Drug Offender Sentencing Alternative (DOSA) (Table 5). Of those eligible, 1,291 or about 22% received DOSA sentences. Women were more likely to receive DOSA, and Caucasians received the alternative sentence at the highest rate, 23.7%. Only 5.3% of eligible Hispanics were sentenced under this rule.

Table 5: DOSA

Gender	Eligible	Received	Percent
Male	4483	966	21.5%
Female	1092	278	25.5%
Race/ Ethnicity	Eligible	Received	Percent
African American	764	169	22.1%
Asian/ Pacific Islander	109	16	14.7%
Caucasian	4336	1026	23.7%
Hispanic	188	10	5.3%
Native American	110	16	14.5%
Total	5801	1291	22.3%

Excludes 56 sentences in which gender and/or race/ethnicity were not provided.

Special Sex Offender Sentencing Alternative

There were 1,437 sex offender sentences entered in FY 2005 with 769 adult felony sentences that were eligible for the Special Sex Offender Sentencing Alternative (SSOSA) (Table 6). Of those eligible, 152 or about 20% received a SSOSA. Women received the alternative at higher rates than men and Caucasians received this alternative at one of the highest rates, 22%. African Americans and Hispanics were sentenced under SSOSA at the lowest rates, 5.4% and 11.8% respectively.

Table 6: SSOSA

Gender	Eligible	Received	Percent
Male	680	132	19.4%
Female	24	8	33.3%
Race/ Ethnicity	Eligible	Received	Percent
African American	68	8	11.8%
Asian/ Pacific Islander	12	2	16.7%
Caucasian	556	124	22.3%
Hispanic	56	3	5.4%
Native American	12	3	25.0%
Total	769	152	19.8%

Excludes 12 sentences in which gender and/or race/ethnicity were not provided.

Exceptional Sentences

An exceptional sentence outside the standard range is allowed if the court finds substantial and compelling reasons. Women received mitigated sentences,

sentences below the standard range, at higher rates and aggravated sentences, sentences above the standard range, at lower rates than men (Table 7). Caucasians received aggravated sentences at the highest rate, 1.45%, while Hispanics received the highest rate of mitigated sentences, 3.24%.

Table 7: Exceptional Sentences

Gender	Eligible	Mitigated		Aggravated	
		Received	Percent	Received	Percent
Male	21968	374	1.70%	320	1.46%
Female	5463	99	1.81%	51	0.93%
Race/ Ethnicity	Eligible	Mitigated		Aggravated	
		Received	Percent	Received	Percent
African American	3767	67	1.78%	45	1.19%
Asian	660	8	1.21%	6	0.91%
Caucasian	20852	342	1.64%	302	1.45%
Hispanic	1111	36	3.24%	10	0.90%
Native American	713	14	1.96%	5	0.70%

Excludes 21 sentences in which gender and/or race/ethnicity were not provided.

Life Sentences

There were 26 life sentences and no death sentences in Washington in FY 2005 (Table 8). All offenders receiving this sentence were male and 16 offenders were sentenced as persistent offenders. African Americans received this sentence at the highest rate, 7 times higher than their proportion of the state population.

Table 8: Life Sentences

Race/ Ethnicity	Persistant		Other Life Sentence	Total	Ratio
	Three Strikes	Two Strikes			
African American	3	0	3	6	7.09
Asian	1	0	0	1	0.62
Caucasian	7	4	6	17	0.84
Hispanic	0	1	1	2	0.92
Total	11	5	10	26	

Data

Offense and offense history data are derived from the Washington Judgment and Sentencing (J & S) forms transmitted to the Sentencing Guidelines Commission by the courts. In reporting on sentences that involved convictions for multiple charges, only the most serious offense was used. Some individual offenders were sentenced for more than one offense in FY 2005. In such cases each sentence is counted as a separate case record. As such, it should be understood that this report reflects sentencing data, not offender data.

Comments or questions may be directed to:

Sentencing Guidelines Commission
P.O. Box 40927
Olympia, WA 98504-0927
IdaL@sgc.wa.gov